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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,807	03/08/2004	Salar Arta Kamangar	Google-40APP (GP-092-00-U)	7711
26479	7590	09/19/2008	EXAMINER	
STRAUB & POKOTYLO 788 Shrewsbury Avenue TINTON FALLS, NJ 07724			LASTRA, DANIEL	
			ART UNIT	PAPER NUMBER
			3688	
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			09/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/795,807

Applicant(s)

KAMANGAR ET AL.

Examiner

DANIEL LASTRA

Art Unit

3688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/23/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-66 have been examined. Application 10/795,807 (ARBITRATING THE SALE OF AD SPOTS TO INCREASE OFFER COMPETITION) has a filing date 03/08/2004 and Claims Priority from Provisional Application 60452683, filed 03/07/2003.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here the claims fails to meet the above requirements because the steps are neither tied to another statutory class of invention (such as a particular apparatus).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-18, 20-24, 26-38, 40-51, 53-57 and 59-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Eldering (US 6,324,519).

Claims 1 and 34, Eldering teaches:

A method comprising:

- a) accepting ad spot availability information from a first party (see col 12, lines 10-20);
- b) multicasting ad spot requests for offers using the accepted ad spot availability information to at least two second parties (see col 10, lines 42-50);
- c) receiving offers (see col 10, lines 35-45);
- d) determining at least one winning ad using the offers (see col 10, lines 40-50);
- e) providing information concerning at least one of the at least one winning ad to the first party (see col 10, lines 50-60).

Claims 2 and 35, Eldering teaches:

- f) recording first party payment information (see col 9, lines 5-15).

Claims 3 and 36, Eldering teaches:

wherein the first party is a Website owner (see col 12, lines 10-20).

Claims 4 and 37, Eldering teaches:

g) paying the first party using the first party payment information (see col 10, lines 60-67).

Claims 5 and 38, Eldering teaches:

g) paying the first party using the first party payment information and a previously agreed upon guarantee (see col 9, lines 5-15).

Claims 7 and 40, Eldering teaches:

f) recording second party billing information (see col 9, lines 5-10).

Claims 8 and 41, Eldering teaches:

wherein the act of multicasting ad spot requests for offers includes sending an ad spot request for offer to at least two of (i) a first ad network, (ii) a second ad network, (iii) a first ad agency, and (iv) a second ad agency (see col 10, lines 10-15).

Claims 9 and 42, Eldering teaches:

wherein the ad spot availability information includes offer rules (see col 10, lines 20-30).

Claims 10 and 43, Eldering teaches:

wherein at least some of the ad spot requests for offers include at least some of the offer rules (see col 10, lines 20-30).

Claims 11 and 44, Eldering teaches:

wherein the ad spot requests for offers include none of the offer rules (see col 10, lines 30-40).

Claims 12 and 45, Eldering teaches:

wherein the act of determining at least one winning ad enforces strict offer rule compliance (see col 10, lines 40-50).

Claims 13 and 46, Eldering teaches:

wherein the act of determining at least one winning ad converts an offer that is not in compliance with an offer rule to an offer that is compliant with the offer rule (see col 10, lines 40-50).

Claims 14 and 47, Eldering teaches:

wherein the act of converting uses estimated ad performance information (see col 11, lines 25-40).

Claims 15 and 48, Eldering teaches:

herein the act of converting uses estimated ad selection rate information (see col 11, lines 25-40).

Claims 16 and 49, Eldering teaches:

wherein the act of converting uses estimated ad conversion rate information (see col 11, lines 25-40).

Claims 17 and 50, Eldering teaches:

A method comprising:

- a) sending ad spot availability information to a proxy representing at least two of (i) a first ad network, (ii) a second ad network, (iii) a first ad agency, and (iv) a second ad agency (see col 10, lines 20-50);
- b) receiving information concerning at least one ad corresponding to the ad spot availability information (see col 12, lines 10-20);

- c) serving that at least one ad on the ad spot; and
- d) receiving payment (see col 10, lines 10-67).

Claims 18 and 51, Eldering teaches:

wherein the payment is determined using a previously agreed upon guarantee from the proxy (see col 9, lines 5-15).

Claims 20 and 53, Eldering teaches:

wherein the ad spot availability information includes offer rules (see col 10, lines 40-50).

Claims 21 and 54, Eldering teaches:

A method comprising:

- a) accepting ad availability information from an advertiser (see col 11, lines 1-25);
- b) multicasting requests for offers using the accepted ad availability information to at least two content owners (see col 10, lines 40-50);
- c) receiving offers (see col 10, lines 40-50);
- d) determining at least one winning ad spot using the offers (see col 10, lines 40-50);
- e) providing information concerning at least one of the at least one winning ad spot to the advertiser (see col 10, lines 40-50).

Claims 22 and 55, Eldering teaches:

- f) recording advertiser billing information (see col 9, lines 10-20).

Claims 23 and 56, Eldering teaches:

g) billing the advertiser using the advertiser billing information (see col 9, lines 5-15).

Claims 24 and 57, Eldering teaches:

g) billing the advertiser using the advertiser billing information and a previously agreed upon guarantee (see col 9, lines 5-15).

Claims 26 and 59, Eldering teaches:

wherein the ad availability information includes offer rules (see col 10, lines 40-50).

Claims 27 and 60, Eldering teaches:

wherein at least some of the requests for offers include at least some of the offer rules (see col 10, lines 40-50).

Claims 28 and 61, Eldering teaches:

wherein the requests for offers include none of the offer rules (see col 9, lines 5-15).

Claims 29 and 62, Eldering teaches:

wherein the act of determining at least one winning ad spot enforces strict offer rule compliance (see col 10, lines 40-50).

Claims 30 and 63, Eldering teaches:

wherein the act of determining at least one winning ad spot converts an offer that is not in compliance with an offer rule to an offer that is compliant with the offer rule (see col 10, lines 40-50).

Claims 31 and 64, Eldering teaches:

wherein the act of converting uses estimated ad performance information (see col 11, lines 10-30).

Claims 32 and 65, Eldering teaches:

wherein the act of converting uses estimated ad selection rate information (see col 11, lines 10-30).

Claims 33 and 66, Eldering teaches:

wherein the act of converting uses estimated ad conversion rate information (see col 11, lines 10-30).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 19, 25, 39, 52 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering (US 6,324,519).

Claims 6 and 39, Eldering teaches:

g) paying the first party using the first party payment information and a previously agreed upon guarantee (see col 9, lines 5-15) but does not expressly teach, wherein the previously agreed upon guarantee includes a profit or cost percentage. However, Official Notice is taken that it is old and well known in the promotion art to pay content providers based upon click through rate of ads. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to

know that Eldering would pay content providers based upon profit percentage such as click through rate and purchased generated from said click throughs, as it is old and well known to do so.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Dedrick (US 5,724,521) teaches an ad placement system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James W. Myhre can be reached on (571)272-6722. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/
Examiner, Art Unit 3688
September 16, 2008